Scott. II-48—22,202—6-2-23.

Revenue (1923) Department.

Miscellaneous SERIES.

G.O. No. 1865

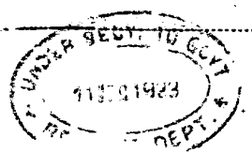
DATED 24-12-1923

[Despatch Abstrac

Revenue **DEPARTMENT.**

CURRENT No. 2420 B

Received ..... 19 *Registered* 11/12/ 19



Subject.

Suits (South Kanara)-Karkal District Munsiff- O.S. No. 417/22- Attachment of Crops- Action under section 145 C.P.C.

ENCLOSURES.
No. .....
.....
Spare copies .....

Cmdt.. **No.** A 5370

Station Madras, *Dated the* 10th December '23 19

From
S. Wadsworth Esq., I.C.S.,
Secretary.
Land Revenue. and
~~The~~ Board of Revenue, ~~Revenue~~ Settlement, ~~etc.~~
~~Separate Revenue.~~

~~Resolution.~~
~~Reference.~~

N. E. Marjoribanks Esq., C.I.I., C.I.E., I.C.S.,
Commissioner of Land Revenue.-

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Read the following paper:-

Letter from C.J. Wells Esq., M.A., I.C.S., Collector of South Kanara, No. Ref. on V.3-5382-23 dated 1st December 1923:-

Suit- Karkal-District Munsif's Court-O. S. No. 1382-417.-

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Request the sanction of the Board for the defence of the above suit. It was filed by one Chandra Rajaya originally against Vamana Kamthi, the potail of Valpady for the realisation of the value of the paddy and straw harvested and given into the charge of the potail under the orders of the Sub Divisional Magistrate, Coondapoor in possession case No. 1/20 of his file.

~~Facts~~ facts of the case are as follows:- [illegible]

1920 the Station House officer, Mudabidri reported to the Sub Divisional Magistrate, Coondapoor that there was a dispute between one Padmaraja and the present Plaintiff Chandraraja regarding the possession of certain fields in S.Nos. 24/2 and 27/8 of Mantradi village which was likely to lead to a breach of the peace and that therefore action under section 145 Cr. P.C. was necessary. The Sub Divisional Magistrate thereupon directed the Station House officer to harvest the standing crop on the property and hand it over to the custody of the potail of any of the neighbouring villages. The police accordingly had the crop harvested on 16th October 1920 and 30th October 1920 and made it over to the custody of the Valpady potail and obtained receipts from him. The total quantity thus made over was 52 muras 3 kalsiges and 6 seers of paddy and 10400 sheaves of straw. The possession case was finally decided by the Sub Divisional Magistrate on 29th March 1921 declaring the possession of the fields to be with the present Plaintiff. On the next day the Sub Divisional Magistrate directed the Station House Officer to arrange to hand over the harvested crop to him. When the police went to the Plaintiff's house in April 1921 he was absent from the village and when he returned in May 1921 and was asked to take delivery he declined on the ground that the paddy and straw had been damaged. The potail himself reported on 20th March 1921 that the straw was completely rotten and the paddy also had depreciated on account of its being harvested when it was raining and stored immediately afterwards without drying it. The police estimated the value of the straw at 52-8-0 and the damage of paddy due to depreciation at Rs.30 and the Revenue Inspector estimated it at Rs. 19-8-0 and Rs. 30 respectively. Meanwhile the paddy disappeared and the potail filed a complaint that the present Plaintiff had it stolen out of revenge for the potail's having given evidence for his opponent in the possession case. The complaint was referred by the police as false, but the Magistrate in dismissing it held that there were not sufficient grounds for holding it to be false. As however there was no provision in the Criminal Procedure Code to make the potail make good the loss to the Plaintiff, a charge of negligence was framed against the potail by the Divisional Officer with a view to take departmental action against him. The Divisional Officer after hearing the potail came to the conclusion that the potail was negligent in not taking proper care of the paddy and straw, that it was not malicious, as the potail's conduct was largely influenced by the

belief that the case would soon end and that the theft was not due to his negligence in guarding it, as he had kept it under lock and key. He accordingly held the potail liable to pay for the whole quantity of straw and the depreciation of the paddy as estimated by the Revenue Inspector. This amount of Rs.49-8-0 was recovered from him and paid to the plaintiff. Not satisfied with this settlement, the plaintiff has brought this suit claiming damages from the potail for the loss of the whole quantity of paddy. The rate of valuation also is much higher than that adopted by the Revenue Inspector. He values paddy at Rs.5 per mura and straw at Rs.5 per 1000 sheaves as against the Revenue Inspector's valuation of paddy at Rs.4 per mura and straw at Rs.1-14-0 per 1000 sheaves. After filing the plaint he put in an affidavit stating that the Sub Divisional Magistrate after having directed the potail to deliver the full quantity of paddy and straw had no jurisdiction to modify his previous order by making him pay only Rs.49-8-0 and that therefore it was desirable to make Government also a party to the suit. The Court has granted the plaintiff's request, but the amended copy of plaint has not been served upon me.

3. The Government Pleader, Mangalore, who was consulted by me states that even if the defendant potail was negligent Government are not responsible, as the state cannot guarantee the fidelity of its agents and employees. He further states that the plaintiff's failure to serve the notice of suit prescribed by section 80 of Cr. P.C. (Act V of 1908) must vitiate his claim against Government. I agree with him.

4. The written statement prepared by the Government Pleader, Mangalore, is enclosed together with the records noted in the margin.

1. Copy of plaint.
2. Records of Mis. case No.13/20 on the file of the Sub Divisional Magistrate, Coondapoor.
3. Dis. file 11 D/Rev. 22 of Coondapoor Divisional Office.
4. Copy of Government Pleader's letter dated 27th November 1923.

5. The plaintiff's request to implead Government as supplemental defendant posted to 21st September 1923, but as no copy of the plaint

was received with the notice served on me on 7th September 1923. I asked the Vakil to get a copy of it and also to get an adjournment. The Vakil sent me a copy of the plaint on 20th September 1923 and on 23rd September 1923 reported that the Secretary of State had been impleaded as supplemental defendant and the case was posted to 22nd October 1923. I then asked the Vakil to point out to the Court that under Rule 5 of Order XXVII of Schedule I of Cr. P.C. as amended by the High Court of Madras as per R.O.C. No. 353/10 dated 8th February 1911 and approved by Government in G.O. No. 567 Judicial dated 27th March 1911 the Court has to allow Government not less than 3 months. The further date to which the suit has been posted has not been intimated to me by the Vakil, but the 3 months' time expires on 21st December 1923.

IN THE COURT OF THE DISTRICT MUNSIFF OF KARKAL.

O. S. No. 417/22.

Between

Chandra Rajaya — Plaintiff

and

Vamana Kamthi — Defendant.

Plaint under Order 7 Rules 1 and 2 of Act V of 1908.

Plaintiff begs to state as follows:-

Plaintiff Chandra Rajaya is the son of Dharmaraj Konnar, and resides in the village of Mantradi of Konnar Magane of Karkal Taluk.

The address of the plaintiff for the service of process is as stated above.

2. Defendant, Vamana Kamthi, is the son of Narshima Kamthi is the Potail of Valpady of Konnar Magane, Karkal Taluk.

3. S.Nos.24/2 and 27/8 of Mantradi village are in the possession of the Plaintiff under the terms of a deed dated the 4th June 1920 executed in his favour by one Brahmin and the Plaintiff is entitled to the profits of these lands.

4. In or about October 1920 when the Plaintiff had raised the crops thereon which were about to be harvested possession proceedings under section 145 were set on foot at the instance of one Padmaraja and the said crops were attached and harvested and the net outturn after meeting all charges and expenses was deposited with the Defendant who was and is a partisan of Padmaraja.

5. The total outturn deposited with the defendant was 52 mooras 3 kalsiges and 6 seers of yenel paddy and 10,400 sheaves of straw worth in all at the then price at Rs.316-12-7.

6. The possession proceedings in Mis. Case No.13 of 1920 terminated on 29th March 1921 in which the Sub-Divisional Magistrate of Coondapoor passed orders declaring possession with the Plaintiff and that the attached harvest deposited with the Defendant should be made over to the Plaintiff.

7. The Defendant colluding with Padmaraja was bent upon depriving the Plaintiff of the said crops he was entitled to and among other devises falsely set up that the crops had been stolen and filed a false complaint of theft which was found to be entirely false.

8. That out of the value of the crops the Plaintiff has recovered only Rs.49-8-0 on 6th January 1922 from the Sub Divisional Magistrate and the rest of the amount together with interest on the price of the crops deposited at 12½ per cent as damages is due to the Plaintiff and plaintiff is entitled to recover the same from the Defendant.

9. The cause of action for the suit arose on 29th March 1921 in the Valpady village where the Defendant resides and within the Jurisdiction of this Court.

10. Plaintiff values the relief claimed in this suit at Rs.316-9-1.

11. Plaintiff therefore prays for a decree against the Defendant for the following reliefs:--

(1) Granting Plaintiff the value of the crop together with damages less amount received as per particulars shown in schedule A. -- 316--9--1

(2) Granting Plaintiff future interest.

(3) Granting Plaintiff costs of this suit.

(4) Granting Plaintiff such other and further relief as to this Court seems fit.

Schedule A.

Price of 52 mooras, 3 kalsiges and 6 seers of paddy at Rs.5 per moora of 56 seers.	264--4--7
Price of 10,400 sheaves of straw at 8 annas per 100 sheaves.	52--8--0
Interest on the above since 29-3-1921 at 12½% as damges up to 29-7-1922.	52-12--6
	369--9--1
Less Rs.49-8-0 and cross interest at 12½% since 6-1-1922 up to 29-7-1922.	53--0--0
Balance Rs.	316-9--1

Mangalore,
12rh August 1922.

Documents filed with the plaint.

(Sd) K.Santhaya Kamth,
Pleader for Plaintiff.

Draft of the Written Statement.

In the Court of the District Munsiff of Puttur.

Original Suit No.417 of 1922.

Between

Chandraraya Shetty — Plaintiff

and

Vamana Kamthi and another — Defendants.

Written Statement of 2nd Defendant under Order VIII Rule 1 Cr. P.C.

The Defendant abovenamed states as follows:-

1. Plaintiff's suit so far as this Defendant is concerned is clearly unsustainable in law.

2. Plaintiff has no cause of action against Government and he has unnecessarily impleaded them in the suit.

3. The Plaintiff's suit is further bad in law for want of previous notice to Collector required to be given under section 80 of the Civil Procedure Code.

4. This Defendant avers that in connection with the possession proceedings in Mis.Case 13/1920 the Sub Divisional Magistrate of Coondapoor had attached the standing crop in the disputed property aggregating in all to 52½ mooras and 20 seers of paddy and 10,400 sheaves of straw, and entrusted the same to the custody of the 1st Defendant the potail of Valpadi village. On the disposal of the said Mis. Case, the harvested crop was duly ordered by the Court to be handed over to the Plaintiff.

5. If as stated in the plaint the 1st Defendant had maliciously caused loss to Plaintiff in respect of the attached crop, Plaintiff cannot hold the state liable for the misfeasances or the tortious acts of the 1st Defendant.

6. This Defendant does not admit the correctness of all the allegations made by the Plaintiff in his plaint as regards the alleged loss of the crop.

7. Plaintiff is not entitled to any relief so far as ~~this~~ this Defendant is concerned.

It is prayed therefore that Plaintiff's suit so far as this Defendant may be dismissed with costs.

I declare that all the facts stated above are true the best of my information and belief.

Sd. G. W. Wells,
1-12-1923,
Collector.

Letter- from A.J.Lobo, Esquire, B.A., B.L., Government Pleader.

To - the Collector of South Kanara

Dated - Mangalore, 27th November 1923.

No. - 293/1923.

Subject:- Suit - O.S.No.417/1922 on the file of the District Munsif of Puttur.

In forwarding herewith the draft of the written statement to be filed in Court in connection with the above suit, I have the honour to state that in my opinion though Plaintiff may succeed in proving that he has actually suffered damage of the paddy and straw attached, due to the negligence of the Defendant, still he cannot hold Government liable for the said loss and damage. The Plaintiff avers in para 7 of his plaint that the 1st Defendant, potail of Valpadi, had caused the said loss on account of malice and collusion with the Respondent and on account of his wanton neglect. If so, it may be pointed out that the State cannot be held liable for the tortious acts of its subordinates. Neither is it liable for their misfeasances or nonfeasances for the State cannot possibly guarantee the fidelity of its agents and employees.

In the circumstances the Plaintiff can if at all hold the 1st Defendant liable for the alleged loss of his crop. It is not clear from the records sent to me how Plaintiff bases his claim against Government and why he has made the Government a party in the suit. Further it may be stated that before instituting any suit against the Secretary of State. Plaintiff was bound in law to have given previous notice to the Collector as required by section 80 of the Civil Procedure Code. The omission of the Plaintiff in

this matter must vitiate his claim if any against Government.

The enclosures sent to me are returned herewith.

Endorsement.-

Submitted to Government for orders.

2. The Board recommends the defence of the suit and the approval of the written statement.

Krishnadurai
10/12
for Secretary.

To the Secretary to Government, Revenue Department with 2 files.

M.P. 10/12
10.12.25

Rev Dept

Suit — Karikal District Munsif's Court
— O.S. 417/22 - Attachment of Crops.
From the Bd of Rev R+S. A 53707/W.1
To U.S.

The facts of the case are clearly
stated in the Collector's letter on pp 1-4 C.
The Board's recommendation to defend
the suit may be accepted and the
draft written statement approved.
The statement was prepared by
the Govt Pleader, South Kanara and
does not seem to call for any
remarks. A draft order is submitted

KD
21.12.23.

It seems to me that the tahsildar
Magte should have ordered the immediate
sale of the attached paddy - & the
deposit of the sale proceeds.

AM
22/12/23

Defence may be ... directed
to rely on Govt orders in the matter of
Magistrate's powers in connection
with sale of attached paddy.

KD
27/12/23.

Scott. II-10 (a)—48,962—2-2-22. (6)

Rev: DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied ..	24/12	
When examined ..		
When signed ..		
When despatched ..		

READ AGAIN G.O. No....., dated.....192 .

" " " " ..... " .....192 .

READ ALSO:—

C. No. 24208 From the Bd of Rev Endt. No. A5370, dated 10-12-1923

" " " " ..... " 192

" " " " ..... " .....192 .

Bd
Known
Court please

ORDER. M/s. No. 1865, dated 24-12-1923.

Bd
24/12

The Govt sanction the defence of the suit O.S. No 417/22 on the file of the District Munsif's Court, Kasaragod. They also approve the draft written statement prepared by the Govt Pleader, Mangalore.

KG
21.12.23.

AM
22.12.23

DJ
27/7

DESPATCHED
25 DEC 1923

The Bd of Rev (R)
with 2 files rtd.
Collector of South Kanara